IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2817 OF 2007
IN
SUIT NO. 3505 OF 1998.

Ishaq Yusuf and others. ... Plaintiffs.
Versus.
Abbas Peer Mohammed and another. ... Defendants.

Shri Anil C.Singh for the Plaintiffs.

Shri Pradeep J.Ramchandani for the Defendant No.1.

Shri Atul Damle for Defendant No.2.

CORAM : ABHAY S.OKA, J.

DATED : 2nd August, 2007.

P.C.:

1. Not on board. Taken on board.

2. Heard the learned Counsel appearing for the 2nd Defendant in support of the Notice of Motion. I have also heard the learned Counsel for the Plaintiff. The Notice of Motion is for setting aside the order dated 22nd February 2007 and for grant of permission to file written statement. By order dated 22nd February 2007 passed by the learned Prothonotary & Senior Master, the suit was ordered to be transferred as against the 2nd Defendant to the list of Undefended suits. The Notice of Motion is opposed by the learned Counsel for the Plaintiff by contending that there is no prayer made for condonation of delay. A perusal of the affidavit in support of the Notice of Motion discloses that the reasons have been set out by the 2nd Defendant for not

filing written statement earlier. Considering the fact that the order is passed on 22nd February 2007, if there is any delay in taking out the Notice of Motion, the same deserves to be condoned.

3. The 2nd Defendant will have to pay costs to the Plaintiff. The amount of costs is quantified at Rs.5000/-.

4. Accordingly the Notice of Motion is made absolute in terms of prayer clause (a) subject to the 2nd Defendant paying costs of Rs.5000/- to the Plaintiff within a period of six weeks from today.

Judge.